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OLC: 78-647/18
26 October 1978

OLC RECORD COPY

25X1 MEMORANDUM FOR: [redacted]

X1 FROM: [redacted]
Assistant Legislative Counsel

SUBJECT: Draft Letter to Senate Foreign Relations Legal Counsel Michael Glennon

25X1 1. [redacted] The attached draft contains answers to the Subcommittee's legal questions drafted by OGC [redacted] and answers to other substantive questions supplied by DDO components. 25X

25X1 2. [redacted] Please give this draft your close scrutiny. It is essential that the information we are providing be as complete and accurate as possible within the bounds of sources and methods protection, and that our answers do not in any way mislead the International Operations Subcommittee in its investigation of foreign intelligence activities in the U.S. Be sure that I have not inadvertently committed any substantive error in preparing OGC or DDO material for transmittal.

[redacted] 25X

25X1 4. [redacted] Plese check with your Desks to ensure accuracy. A list of Subcommittee questions still remaining to be dealt with outside the framework of this letter is attached for your information.

25X1 5. [redacted] Time is of the essence. I want to send this letter no later than COB Friday, 3 November.

[redacted] 25

Attachments:
As Stated

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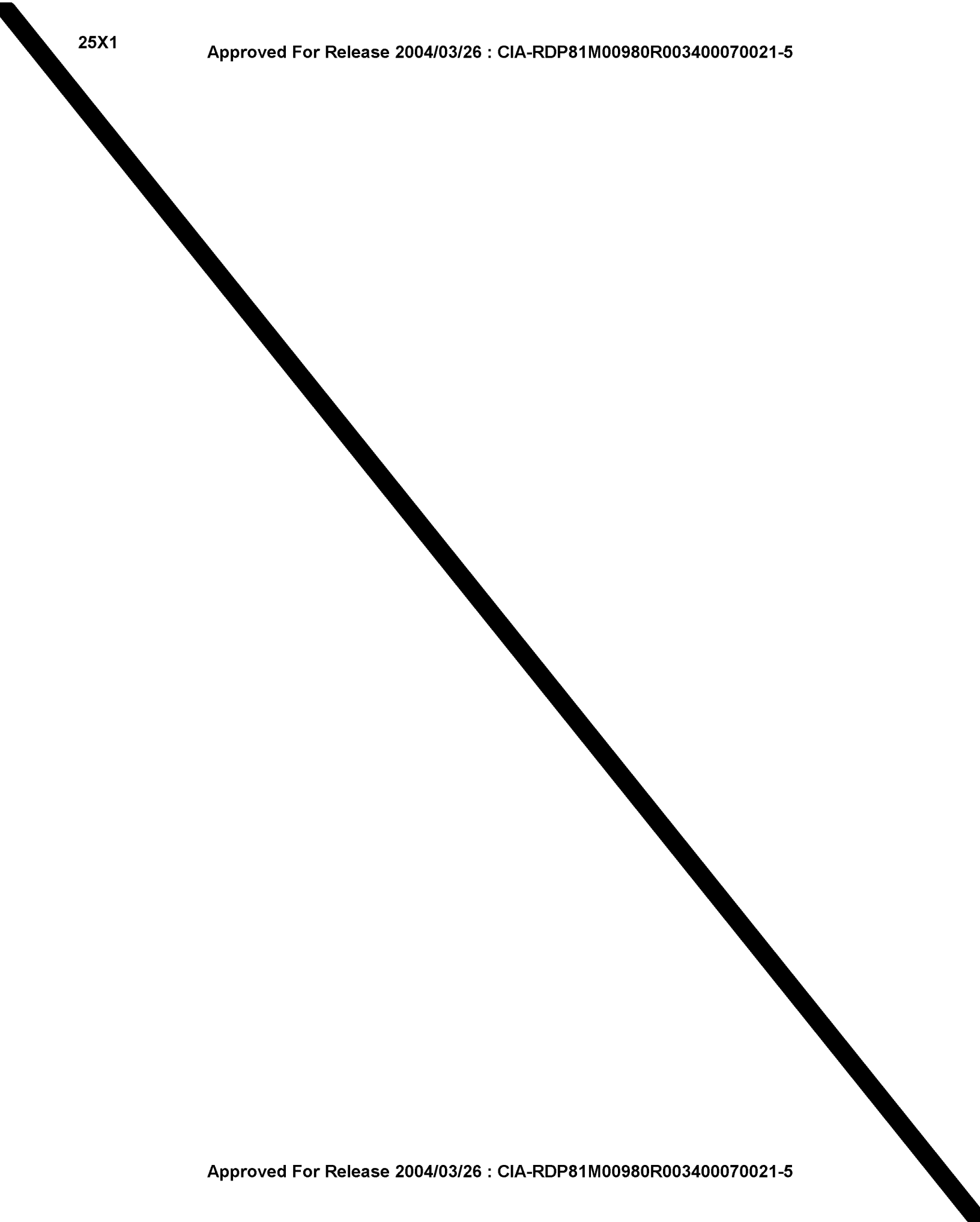

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THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

Office of Legislative Counsel

Mr. Michael Glennon
Legal Counsel
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mike:

Enclosed are answers to questions posed in your letters of 28 and 30 August 1978, and in Chairman McGovern's letters of 17 August and 18 October 1978. Also enclosed are responses to various questions that have arisen during the course of the briefings you have received on certain foreign intelligence services.

I am sure you realize that the fact that it has taken some time for us to respond on these matters does not reflect any reluctance to cooperate with the International Operations Subcommittee's investigation. Some of your questions involved extensive file searches, while others raised complex legal questions. We have attempted to answer all of your questions expeditiously and as fully as possible within the parameters of the Memorandum of Understanding between Chairman McGovern and the DCI.

Sincerely,

[redacted] 25X
Assistant Legislative Counsel

Enclosures

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[redacted] 25X

Request:

Provide a memorandum discussing guidelines governing CIA dissemination of information concerning residents of the United States to foreign governments. Include an analysis of how these guidelines have changed since 1 January 1970.

Response:

Currently, CIA may not disseminate any information to foreign governments or, for that matter, to recipients within the Executive Branch, unless such dissemination is consistent with Executive Order 12036 issued by President Carter on 26 January of this year. Under Section 2-208 of the Order, CIA is prohibited from disseminating nonpublicly available information concerning the activities of United States persons, whether such activities took place domestically or abroad, without their consent unless the information falls within carefully delimited categories of information and dissemination is permitted by procedures approved by the Attorney General. One of these categories, for example, is "[i]nformation about a person who is reasonably believed to be . . . engaging in international terrorist activities or narcotics production or trafficking, or endangering the safety of a person protected by the United States Secret Service or the Department of State," [Section 2-208(g)]. Section 2-310(c) of the Order makes it clear that the requirements of Section 2-208(g) or other appropriate categories of 2-208 must be satisfied before nonpublicly available information concerning the activities of United States persons may be disseminated to "entities of cooperating foreign governments."

The protection accorded United States persons in Section 2-208 does not extend to residents of the United States who are not United States persons. "United States person," as defined in Section 4-214 of the Order, does not include aliens who are not permanent resident aliens. This is not to say that such aliens would be unprotected. If the provision of information about such an alien would have the effect of encouraging, directly or indirectly, a foreign intelligence service to undertake unlawful activities such as assassination or electronic surveillance against such aliens in the United States, the provision of that information would be inconsistent with the restrictions on indirect participation in prohibited activities found in Section 2-307 of the Order. Moreover, the absence of a particular restriction in the Executive Order does not mean that CIA may disseminate any information on aliens who are not permanent resident aliens. Authority to disseminate must be authorized by Section 1-8 of the Order. CIA is authorized in Section 1-8 to disseminate information concerning the "capabilities, intentions and activities of foreign . . . persons" related to the national security and information "on foreign aspects of narcotics production and trafficking," (see Sections 1-802, 4-205 and 1-803).

With respect to dissemination of information, Executive Order 12036 essentially carries forward the regulatory scheme of its predecessor, Executive Order 11905 issued by President Ford on 19 February 1976. Compare Sections 5(b)(7) [and, in particular, subsection (V)], 5(c)(3), and 4(b) [and, in particular, subsections (1) and (3)]. During the period 1 January 1970 to 19 February 1976 there was no comprehensive Executive Order governing intelligence activities.

In addition to the Executive Order, Attorney General-approved procedures, and an internal implementing regulation, CIA has been constrained in what it may provide foreign liaison services, including information regarding residents of the United States, by an internal regulation in effect, with modifications, since at least 1 January 1970. This regulation provides that information, insofar as it may be classified, may not be provided to a foreign government unless a determination has been made that to do so would be to the net advantage of the United States "giving consideration to such matters as mutual interest, need-to-know, security aspects and the wisdom of the proposed release." The regulation also provides that classified information originating in agencies other than CIA will not be released without the consent of the originator.

Moreover, Directorate of Operations policy in effect since September 1976 imposes strict guidelines on the dissemination of "derogatory information" on United States persons to foreign governments even if such dissemination is otherwise permissible under Executive Order. Even where information on a non-United States person is considered to be nonderogatory, officials authorized to release information to foreign governments are obligated to consider whether the release may result in a foreign government's taking action which could result in social, political or economic discrimination against the person.

Request:

What are the limits on CIA's authority to operate in the United States? To what extent can CIA penetrate foreign establishments in the United States?

Response:

Under Section 102(d)(3) of the National Security Act of 1947, CIA has "no police, subpoena, law-enforcement powers, or internal-security functions." Section 1-801 of Executive Order 12036 provides for CIA collection of national foreign intelligence within the United States, in coordination with the FBI under procedures agreed upon by the DCI and the Attorney General.

Section 1-805 of Executive Order 12036 provides that CIA may "[w]ithout assuming or performing any internal security functions, conduct counter-intelligence* activities within the United States, but only (emphasis added) in coordination with the FBI and subject to the approval of the Attorney General." The FBI has primary responsibility for the conduct of counterintelligence in the United States and the Bureau normally would handle attempts to penetrate foreign establishments in this country. It is conceivable that a CIA source within a foreign liaison service abroad could be transferred to an establishment in the United States. In such a circumstance, long-standing agreement with the Bureau and formal Directorate of Operations policy require that CIA inform the Bureau and that the asset either will be handled jointly or that CIA will continue the handling while servicing the Bureau's counterintelligence requirements. Under counterintelligence procedures approved by the Attorney General, CIA would not be permitted to penetrate a foreign establishment in the United States unless the Attorney General is persuaded that CIA rather than FBI should conduct the penetration and that the penetration is not prohibited by the National Security Act provision mentioned above.

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*Under Section 4-202 of E.O. 12036 "counterintelligence" is defined as:

> information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons, but not including personnel, physical, document, or communications security programs.

Active collection efforts targeted against foreign establishments in the United States solely for purposes of obtaining evidence for use in criminal prosecutions is the exclusive province of the FBI. However, information derived from the lawful conduct by CIA of foreign intelligence or counterintelligence collection activities outside or within the United States which incidentally indicates violations of United States law may be disseminated and, according to Section 1-706 of E.O. 12036, is required to be disseminated to the Attorney General, even if it involves United States persons. The guidelines contemplated by Section 1-706 have not been finalized as yet, but in the interim CIA must report any possible violation of federal criminal law by nonemployees as well as employees.

Request:

What does CIA know about registration of agents of foreign principals under the Foreign Agents Registration Act, the registration of persons trained in foreign espionage systems (50 U.S.C. § 851 et. seq.); and the notice required of agents of foreign governments (18 U.S.C. § 951)? Is the Agency routinely informed by the Department of State or Justice of registration or notification under these statutes? Can the Agency find out about such registration or notification upon inquiry to the Departments of Justice or State?

Response:

CIA is not routinely advised by the Departments of Justice or State of registration or notification pursuant to these statutes. However, registration under the Foreign Agents Registration Act or under 18 U.S.C. § 851 et. seq. (insofar as a statement is not withdrawn by the Attorney General on national security and public interest grounds) is publicly available information obtainable at the Registration Unit, Criminal Division, of the Department of Justice. Notification to the Secretary of State pursuant to 18 U.S.C. § 951, according to the Department, is available to CIA upon request. The Agency does not consider these records to be productive sources of useful information, and it does not, therefore, make a concerted effort to maintain constant awareness of such registrations and notifications.

Next 10 Page(s) In Document Exempt

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